No. 89-1310

IN THE

Supreme Court of the United States

October Term, 1989

PATRICK T. REID,
Petitioner,

v.

WHITE MOTOR CORPORATION and JOHN T. GRIGSBY, Jr.,
Disposition Assets Trustee of White Motor Corporation,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT JOHN T. GRIGSBY, JR., Disposition Assets Trustee of White Motor Corporation, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. May a person seeking to file a class proof of claim in a bankruptcy proceeding move pursuant to Bankruptcy Rule 9014 to apply Bankruptcy Rule 7023 after the bankruptcy court has granted the debtor's motion for summary judgment?

2. May a person who is not a member of the class of claimants he purports to represent file a class proof of claim in a bankruptcy proceeding?

3. Where a person attempts to file a "multiple claim" pursuant to Bankruptcy Rule 3001, must the person file the verified statement mandated by Bankruptcy Rule 2019?

LIST OF PARTIES TO THE PROCEEDING BELOW

The parties to the proceeding below in the Sixth Circuit were:

APPELLANT: Patrick T. Reid, Esq.

APPELLEE: John T. Grigsby, Jr., Disposition Assets Trustee of White Motor Corporation.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit in *Reid v. White Motor Corp.* is reported at 886 F.2d 1462 (6th Cir. 1989), and is reprinted at page A-4 of Petitioner's Appendix. The opinion of the United States District Court for the Northern District of Ohio is reported at 65 Bankr. 383 (N.D. Ohio 1986), and is reprinted at page A-26 of Petitioner's Appendix. The opinion of the United States Bankruptcy Court for the Northern District of Ohio granting summary judgment in favor of Respondent is reprinted at page A-42 of Petitioner's Appendix. The opinion of that Bankruptcy Court denying Petitioner's post-trial motions is reprinted at page A-46 of Petitioner's Appendix.

JURISDICTION

Petitioner invoked the jurisdiction of this Court pursuant to 28 U.S.C. §1254(1).

STATUTES, FEDERAL RULES OF CIVIL PROCEDURE AND BANKRUPTCY RULES INVOLVED

This case involves the application of 11 U.S.C. §502, Federal Rule of Civil Procedure 23 and Bankruptcy Rules 2019, 3001, 7023 and 9014, all of which are reprinted in Petitioner's Appendix beginning at page A-48.

PRELIMINARY STATEMENT

On September 28, 1989 the United States Court of Appeals for the Sixth Circuit affirmed the decision of the Bankruptcy Court for the Northern District of Ohio in *In re White Motor Corp.*, Case No. B80-3361. That decision disallowed a purported class claim filed by Patrick T. Reid ("Reid"), an attorney, on behalf of former employees of the Diamond Reo Truck Division of White Motor Corporation ("WMC"). The basis for the Sixth Circuit's decision was Reid's total failure to comply with applicable bankruptcy rules.

In sum, Reid failed to move the Bankruptcy Court pursuant to Bankruptcy Rule 9014 to apply Bankruptcy Rule 7023 to the contested matter; Reid filed the class claim in his name despite the fact that he was not a member of the class and therefore could not be an adequate class representative; Reid failed to identify the class he purportedly represented; Reid failed to confirm his representational status; and, if, as Reid asserted for the first time in the Sixth Circuit, the claim was filed as a "multiple claim" rather than a "class claim," Reid failed to comply with Bankruptcy Rule 2019. The Sixth Circuit agreed with Reid that the bankruptcy rules permit class claims and agreed with Reid that the bankruptcy rules permit, in the alternative, multiple claims. The Sixth Circuit *did not* agree that Reid could ignore every applicable bankruptcy rule and yet pursue such claims.

Reid attempts to create a conflict among decisions from the Sixth, Seventh and Eleventh Circuits to support his Petition for Writ of Certiorari. The "conflicting" cases cited by Reid are entirely consistent with the Sixth Circuit's opinion. The decision below in favor of Respondent was tied to the unique facts of this case only and decided against Reid because he failed to comply with the bankruptcy rules. Thus, because there is no conflict within the circuits and the decision below was based upon the unique facts of the case before the Sixth Circuit, Respondent respectfully requests that this Court deny the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

This case arose upon the filing of a purported class proof of claim by Patrick T. Reid, an attorney, in the Chapter 11 Bankruptcy of the White Motor Corporation in the Bankruptcy Court for the Northern District of Ohio. John T. Grigsby, the Respondent, is the Disposition Assets Trustee ("Trustee") of the Reorganization Trust established by the Reorganization Trust Agreement dated November 18, 1983 between Grigsby and WMC as mandated by the Chapter 11 Plan of Reorganization of WMC.[1] Claim No. 188 identified Reid as "the agent of all Class Members of a certain class action filed in the Ingham County Circuit Court, File No. 77-19932-CK. . . ." The class claimants were not identified on the proof of claim; there was no affidavit or other authorization for Reid to act in a representative status.

The proof of claim allegedly arose out of WMC's sale of its Diamond Reo Truck Division to Diamond Reo on August 16, 1971. At that time, all of the affected WMC employees were immediately employed by Diamond Reo. No claims for severance pay were made against WMC. In addition, in accordance with the terms of the WMC/ Diamond Reo Purchase Agreement, Diamond Reo assumed all of WMC's employment and labor contracts.

Diamond Reo was adjudicated bankrupt on May 3, 1975. Some Diamond Reo employees filed individual claims for severance pay against Diamond Reo. No employees sought severance pay from WMC.

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[1] The United States Bankruptcy Court for the Northern District of Ohio confirmed the Plan by Order entered on November 18, 1983. Pursuant to the Plan and Trust Agreement, the Reorganization Trust succeeded to certain assets of WMC and became responsible for liquidating and satisfying claims against WMC in accordance with the Plan under the Bankruptcy Code.

On February 21, 1977, just before the running of Michigan's seven year statute of limitations applicable to contract claims, Reid, a Michigan attorney who was not an employee of WMC or Diamond Reo, filed a class action against WMC on behalf of the WMC employees who had been employed in WMC's Diamond Reo Truck Division and then employed by Diamond Reo. *Burch v. White Motor Corp.*, Case No. 77-19932-CK (Mich. Cir. Ct., Ingham Cty. 1977). WMC asserted a number of defenses to the claim, including the immediate employment of the employees by Diamond Reo after the sale and the failure of the employees to file a claim against WMC until after Diamond Reo declared bankruptcy, thus foreclosing WMC from an indemnification claim against Diamond Reo under the Purchase Agreement.

WMC immediately filed a claim against the Diamond Reo bankruptcy estate. The Michigan state court certified the *Burch* class. Class members received notice of the suit and were required to "opt in" by January 30, 1980. At the time that WMC filed its Petition for Reorganization on September 4, 1980, counsel for WMC had not compiled a list of putative class members or their claims. Counsel for WMC took no further action on the *Burch* claim because of the automatic stay imposed by 11 U.S.C. §362. Reid did not attempt to have the stay lifted. The Michigan court dismissed the *Burch* complaint on July 12, 1983 for lack of progress, over a month *before* the WMC claims bar date of August 30, 1983.

In the meantime, on September 3, 1981, Reid filed a general unsecured claim against WMC. As stated *supra*, Reid filed the claim in his own name as an "agent" of members of the *Burch* class; he had no individual claim

against the estate. Reid amended the claim on June 29 and June 30, 1982 to increase the amount; other than that amendment, he took no action with respect to the claim.

WMC filed an objection to the claim on September 30, 1983, thereby making Claim No. 188 a contested claim. Reid still did nothing to advance his claim. He did not move the Bankruptcy Court to apply Bankruptcy Rules 9014 and 7023 to the contested matter; he did not file a motion for class certification; he did not ask to file any late individual claims.

On September 6, 1984 WMC filed a Motion for Summary Judgment in which the Trustee asserted, among other things, that:

> (1) A class proof of claim is inconsistent with the statutory requirement of individual proofs of claim;
>
> (2) Federal Rule of Civil Procedure 23 can be applied to a contested matter only upon motion to the Bankruptcy Court; and
>
> (3) Rule 23 could not be applied to Reid's claim as a matter of law because Reid was not a member of the class and hence not an adequate representative.

Reid still did not make any attempt to comply with applicable bankruptcy rules. Instead, Reid's opposition to the summary judgment was based upon the "collateral estoppel" effect of the certification of the *Burch* class by the Michigan court and his representation of the *Burch* class.

The Bankruptcy Court granted the Trustee's Motion for Summary Judgment, concluding, in part, that class claims are inappropriate in bankruptcy proceedings. Petitioner's Appendix at A-43. The Bankruptcy Court

also cited Reid's failure to move to apply Bankruptcy Rules 9014 and 7023 prior to the order granting summary judgment, failure to show he was authorized to file a class claim and failure to offer any reason for the court to extend the claims bar date. Importantly, the Bankruptcy Court stated that it could not rule in advance on the propriety of any individual request to file a late claim, leaving the door wide open for a "class" member who, in reliance on the *Burch* certification, did not file an individual claim.

No individual claims were filed. Instead, thirty-two days later, after the ten day appeal time had run, Reid filed three motions, styled as (1) a Motion for Reconsideration, (2) a Motion to Apply Rule 7023 to the Contested Proceeding, and (3) a Motion to Consider Claim Properly Filed by Individuals, to Permit Amendment of the Claim or to Permit the Filing of Late Individual Claims. The Bankruptcy Court overruled all three motions because Reid failed to raise any new legal or factual issues and because the "claims were not properly presented for adjudication. . . ." Petitioner's Appendix at A-47.

Reid appealed the Bankruptcy Orders of June 20, 1985 and September 11, 1985. The Trustee moved to dismiss the appeal of the June 20, 1985 Order as untimely and the September 11, 1985 order for failure to demonstrate abuse of discretion. The District Court granted the Trustee's motion on June 30, 1986. *In re White Motor Corp.*, 65 Bankr. 383 (N.D. Ohio 1986), reprinted at page A-26 of Petitioner's Appendix.

Through clerical error, the District Court's June 30, 1986 Order was docketed to a different WMC case. However, the Trustee received notice of the June 30,

1986 Order and, after the thirty day appeal time passed without Reid having filed an appeal, distributed to WMC creditors funds previously reserved for the Reid claim.

Sixteen months later, on October 30, 1987, the District Court issued a *nunc pro tunc* order applying its June 30, 1986 Order to the appropriate case. Reid appealed to the Sixth Circuit Court of Appeals from the October 30, 1987 Order.

The issues initially presented to the Sixth Circuit by Reid concerned (1) that court's jurisdiction to hear the appeal, (2) the appropriateness of class claims in Bankruptcy Court, and (3) Reid's compliance with bankruptcy procedures. When he filed his brief on the merits, however, Reid argued for the first time that his was *not* a class claim but a "multiple claim" properly filed by an agent of the individual claimants pursuant to Bankruptcy Rule 3001(b). This deliberate confusion of theories pervades Reid's Petition for Writ of Certiorari and becomes the basis for Reid's improvised "conflict within the circuits."

The Sixth Circuit agreed with Reid's jurisdictional arguments and agreed with Reid that class claims may be an appropriate vehicle for pursuing claims in bankruptcy. The court then examined whether Reid had (1) complied with the procedural requirements of pursuing a class claim as set forth in Bankruptcy Rules 9014 and 7023 or (2) based upon his newly-created "agency" theory, complied with the procedural requirements of Bankruptcy Rules 3001(b) and 2019. The Sixth Circuit properly disallowed Reid's claim because he "ignored every mandatory requirement" essential to complying with the bankruptcy rules. Petitioner's Appendix at A-21. The Sixth Circuit found that Reid:

> 1. "[F]ailed to confirm his representative capacity to represent a class;"

2. "[F]ailed to identify the class he purportedly represented;"

3. "[F]ailed to timely petition the bankruptcy court to apply the provisions of Rules 9014 and 7023;"

4. "Had no authorization designating him as a representative of the putative class;"

5. Lacked standing because he "was not a member of the class of former employees of WMC's Diamond Reo Truck Division;" and

6. Failed to file a verified statement with the Clerk of Bankruptcy Court as required by Bankruptcy Rule 2019.[2]

Petitioner's Appendix at A-21—A-23.

The decision of the Sixth Circuit in *Reid* is consistent with that of the Eleventh Circuit in *In re The Charter Co.*, 876 F.2d 866 (11th Cir.), *petition for cert. filed*, 58 U.S.L.W. 3291 (U.S. Oct. 31, 1989) (No. 89-579), *motion to defer consideration granted*, 110 S. Ct. 559 (1989), and that of the Seventh Circuit in *In re American Reserve Corp.*, 840 F.2d 487 (7th Cir. 1988). All three circuits agree that class claims may be allowed in bankruptcy.[3] All three circuits agree that a

[2] The Dissent in *Reid* did not disagree with the majority's conclusions; the Dissent simply would have permitted an amendment of the claim (1) even though Reid had ignored all earlier opportunities to amend, (2) even though the amendment would come eight years after the filing of the Proof of Claim and eighteen years after the sale of the Diamond Reo Truck Division, (3) even though the Trustee, in good faith, relied upon the district court decision and distributed funds reserved for the claim, and (4) even though no individual claimant had attempted to file an individual claim despite the open door left by the Bankruptcy Court.

[3] As discussed *infra* at n.7, Reid may not seek review of the Tenth Circuit's opposing position as set forth in *In re Standard Metals Corp.*, 817 F.2d 625 (10th Cir.), *modified on other grounds sub nom. Sheftelman v. Standard Metals Corp.*, 839 F.2d 1383 (10th Cir. 1987), *cert. dismissed*, 109 S. Ct. 201 (1988).

bankruptcy court has discretion under Rule 9014 not to apply Rule 7023 to a contested matter. The Sixth Circuit and the Eleventh Circuit agree that a motion under Rule 9014 to apply Rule 7023 must be made in a timely manner, the Eleventh Circuit concluding that such a motion is timely if filed after an objection to the claim is filed and the Sixth Circuit concluding that such motion is not timely if filed after summary judgment has been granted to the debtor. Finally, all three circuits agree that the filing of a Bankruptcy Rule 2019 disclosure statement is not required where a *true class proof of claim* is filed.

Giving Reid full benefit of any doubt by considering his newly-concocted "multiple claim" argument, the Sixth Circuit went beyond *In re The Charter Co.* to consider the situation where there is no true class proof of claim and the claimant argues the application of Bankruptcy Rules 3001(b) and 2019.[4] The Sixth Circuit applied the mandate of Rule 2019 that an agent filing a multiple claim "shall" file a verified statement "with the clerk of the bankruptcy court delineating his authority to act as an agent for any purported class." Petitioner's Appendix at A-22. This holding is not in conflict with any case cited by Petitioner and is simply an application of the bankruptcy rules. Thus the decision of the Sixth Circuit is consistent with the recent case law with

[4] There was no issue in *In re The Charter Co.* or *In re American Reserve Corp.* about the propriety of the class representation. Unlike the instant situation the plaintiff in each of those cases was a member of the class and did not raise a "multiple claim" argument.

respect to class claims in bankruptcy. Reid seeks review of a decision which is adverse to him because of the unique facts before the Court which stem from his failure to follow clearly delineated bankruptcy procedures.[5] For these reasons, Respondent requests that the Petition be denied.

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[5] Reid attempts an equity argument by quoting language from an examiner's report in the WMC bankruptcy. See Petition for Writ of Certiorari at 20-21. Reid fails to tell this Court that the examiner's report quoted has nothing to do with the Diamond Reo bankruptcy which underlies Reid's claim. Instead, the report pertains to the WMC proceeding filed in 1980. The employees referenced in the report are *not* the putative claimants in this action. They were WMC employees at the time of the WMC reorganization and, unlike the claimants here, were not re-employed by WMC after the reorganization. Reid's claimants were employed immediately by Diamond Reo upon the sale of the Truck Division. Presumably these Diamond Reo employees pursued claims for severance benefits against Diamond Reo in the Diamond Reo bankruptcy.

Further undercutting Reid's equity argument is the fact that none of the "class" members ever came forward to file an individual claim after Reid's "class claim" was disallowed and after the Bankruptcy Court invited individual motions to file late claims.

REASONS WHY THE PETITION SHOULD BE DENIED

Reid's initial brief in the Court of Appeals argued that his claim was *not* a class proof of claim. Rather, he argued that it was a "multiple claim" filed pursuant to Bankruptcy Rule 3001(b). In his reply brief to the Sixth Circuit, however, Reid changed his position again and argued that the claim was properly filed as a class claim. Now, having succeeded in persuading the Court of Appeals to recognize that class proofs of claim are allowable, Reid argues that the Sixth Circuit's decision is in conflict with decisions from the Courts of Appeal for the Seventh and Eleventh Circuits. On review, however, it is clear that no such conflict exists. Each of the decisions cited by Reid is consistent in that each recognizes and allows the filing of class proofs of claim. Moreover, the decision of the Sixth Circuit turns upon and is limited by its own facts arising from Reid's failure to follow applicable bankruptcy rules. What Reid is seeking from this Court amounts to a practitioner's guide to class claims. See Petition at 6-7. However, further review by this Court will serve no important purpose and will not serve to clarify the already clear procedural requirements for filing class claims (and multiple claims) in bankruptcy.

THE PROCEDURAL REQUIREMENTS ESTABLISHED BY THE SIXTH, SEVENTH AND ELEVENTH CIRCUITS FOR FILING CLASS PROOFS OF CLAIM ARE CONSISTENT. THERE IS NO NEED FOR FURTHER CLARIFICATION BY THIS COURT.

Class proofs of claim have only recently been recognized in bankruptcy proceedings. The first appellate decision[6] directly considering class proofs of claim was *In re Standard Metals Corp.*, 817 F.2d 625 (10th Cir.), *modified on other grounds sub nom. Sheftelman v. Standard Metals Corp.*, 839 F.2d 1383 (10th Cir. 1987), *cert. dismissed*, 109 S. Ct. 201 (1988). In *In re Standard Metals*, the Tenth Circuit refused to allow class proofs of claim. Since *In re Standard Metals*, however, the Sixth, Seventh and Eleventh Circuits have recognized and allowed the filing of class proofs of claim.[7] *See In re American Reserve Corp.*, 840 F.2d 487 (7th Cir. 1988); *In re The Charter Co.*, 876 F.2d 866 (11th Cir. 1989); *Reid v. White Motor Corp.*, 886 F.2d 1462 (6th Cir. 1989).

As the Eleventh Circuit explained in *In re The Charter Co.*, the procedures for incorporating Federal Rule of Civil Procedure 23 into bankruptcy proceedings

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[6] The Eleventh Circuit in *In re GAC Corp.*, 681 F.2d 1295 (11th Cir. 1982), did not decide the issue of whether class proofs of claim are allowable in bankruptcy proceedings:

> We need not and do not decide the issue whether a class proof of claim is ever allowable in a Chapter X proceeding, however, for even if we assume *arguendo* that class claims are allowable, Novak failed to follow any of the procedures required to prosecute a class action.

In re GAC Corp., 681 F.2d at 1299.

[7] Petitioner appears to argue that even though the issue of the propriety of class claims in bankruptcy was decided in his favor below, he may raise the conflict between the Tenth Circuit, on the one hand, and the Sixth, Seventh and Eleventh Circuits, on the other hand, to support his Petition. See Petition at 8. By so doing, Petitioner seeks an advisory opinion from this Court.

are contained in the bankruptcy rules. Under Bankruptcy Rule 9014, the bankruptcy court, in its discretion, may apply Rule 7023 (and by extension Fed. R. Civ. P. 23) in a contested matter. *In re The Charter Co.*, 876 F.2d at 873. A filed proof of claim does not become a contested matter until an objection to the claim has been made. Once an objection has been made, the class representative must move under Rule 9014 to request application of Rule 7023. *Id.* at 874.

The Eleventh Circuit held that a claimant seeking to act as a class representative must promptly move under Bankruptcy Rule 9014 to invoke Bankruptcy Rule 7023. *Id.* The class representative in *In re The Charter Co.* did exactly that; once the debtor objected to the claim, the class representative "promptly moved under Bankruptcy Rule 9014 to invoke [Bankruptcy Rule] 7023." *Id.* By comparison, Reid's motion pursuant to Rule 9014 to invoke Rule 7023 was filed twenty-two months after the Trustee's objection. The Sixth Circuit's decision below endorsed the Eleventh Circuit's requirement of a "prompt" motion under Rule 9014 and distinguished Reid's belated attempt to invoke Rule 9014 and Rule 7023:

> In *In re The Charter Co.*, the appellants had filed a motion pursuant to Rule 9014 to invoke Rule 7023 *immediately after the trustee objected to their class proof of claim.* In contrast, Reid filed a motion pursuant to Rule 9014, on July 22, 1985, *after the bankruptcy court had granted the Trustee's motion for summary judgment* dismissing Reid's purported class proof of claim.

Petitioner's Appendix at A-21 n.13 (emphasis added).

Read together, the Sixth Circuit's decision below and the Eleventh Circuit's decision in *In re The Charter Co.* establish that to be considered timely, a motion under Rule 9014 to invoke Rule 7023 is "prompt" if made after an objection has been filed to the class proof of claim. A motion to apply Rule 7023 made after judgment has been entered—such as that filed by Reid—will be untimely. Both courts held that where the party seeking to act as a class representative fails to invoke promptly Rule 7023, there can be no abuse of discretion in refusing to apply Rule 7023.

Because the procedural requirements for invoking Bankruptcy Rule 7023 in a class claim proceeding are clear and there is no conflict between the decision of the court below and the other courts of appeal, the Petition for a Writ of Certiorari should be denied.

THE SIXTH CIRCUIT'S DETERMINATION THAT REID'S "MULTIPLE CLAIM" WAS PROPERLY DISALLOWED BECAUSE OF HIS FAILURE TO COMPLY WITH RULE 2019 DOES NOT CONFLICT WITH THE DECISIONS OF THE SEVENTH AND ELEVENTH CIRCUITS.

One of the grounds for the Bankruptcy Court's rejection of Reid's "class claim" argument was that Reid was not a member of the class and, therefore, could not serve as the class representative. Petitioner's Appendix at A-43—A-44. Apparently recognizing this would be a fatal flaw in his class claim, Reid raised for the first time before the Sixth Circuit the "alternative" position that his was not a class claim but a "multiple claim" authorized by Bankruptcy Rule 3001(b). The Sixth Circuit addressed Reid's alternative "multiple claim" argument and once again required that he follow the mandates of the bankruptcy rules. The Sixth Circuit held that Reid, as an attorney representing the class and not a member of the class, failed to file the verified statement required by Rule 2019 setting forth his authority to act as an agent for the purported class.[8] Petitioner's Appendix at A-22. Despite Reid's contentions, the Sixth Circuit's holding on this issue does not conflict with the decisions of the Seventh and Eleventh Circuits.

The requirements of Bankruptcy Rule 2019 are mandatory. Bankruptcy Rule 2019(a) requires that every person purporting to represent more than one creditor "*shall*" file a verified statement with the clerk of the bankruptcy court stating the names and addresses of the

[8] At the time of the filing of Reid's claim, the applicable rule was Chapter X Rule 10-211, which was essentially the same as current Bankruptcy Rule 2019(a).

creditors, the nature and amount of their claims, when the claims were acquired, and the relevant facts and circumstances in connection with the employment of the agent. Rule 2019 further requires the purported agent to file a copy of the instrument empowering the agent to act on behalf of the creditors he is representing. See Petitioner's Appendix at A-22.

In *In re American Reserve Corp.*, the Seventh Circuit did not directly address Rule 2019. Indeed, Reid concedes as much in his Petition for Writ of Certiorari. See Petition at 15. The Seventh Circuit simply recognized that where a *true class action* exists, *i.e.*, a claim commenced by a class representative who is a member of the class and who has standing to represent a class, certification of the class by the bankruptcy court satisfies the purposes of Rule 2019. *In re American Reserve Corp.*, 840 F.2d at 493. However, because Reid was not a member of the class he purported to represent, his claim was not a "true Rule 23 class action," and he was required by Bankruptcy Rule 2019 to file a verified statement setting forth his authority to act as an agent for the class.

Similarly, the Eleventh Circuit's decision in *In re The Charter Co.* does not support Reid's claim of a conflict within the circuits. The Eleventh Circuit recognized, like the Seventh Circuit in *In re American Reserve Corp.*, that the bankruptcy court's certification of a class is all that is necessary to comply with the purposes of Rule 2019. *In re The Charter Co.*, 876 F.2d at 875 n.14. What Reid fails to explain in his Petition is that the class representatives in both *In re American Reserve Corp.* and *In re The Charter Co.* were members of the classes they sought to represent. Thus, given the timely filing of a motion to apply Rule 7023 and certification of the class, the application of Rule 2019 was not an issue.

In contrast, Reid was not a member of the class of former employees he sought to represent and had not filed a timely motion to apply Rule 7023. If instead of relying upon an improper class claim Reid sought to file a "multiple claim," he was required to adhere to the mandates of Rule 2019 and cannot bootstrap the holdings of *In re The Charter Co.* and *In re American Reserve Corp.* to escape his blatant avoidance of the rule.

The simple and consistent rule of the Sixth, Seventh and Eleventh Circuits is as follows: If a true class claim is filed so that a class may be certified, there is no requirement that the class representative comply with Rule 2019. If, as with the *Reid* case, there is no true class claim filed and no class may be certified, the "agent" for the class must comply with the mandate of Rule 2019.[9]

[9] As discussed *supra*, the Sixth Circuit disallowed Reid's class claim because, *inter alia*, he was not a member of the class he purported to represent. Petitioner's Appendix at A-22. Reid persists in arguing, however, that his authorization to represent the class in the *Burch* litigation was all that was needed to file the proof of claim in the WMC bankruptcy. The Sixth Circuit rejected this argument as being "less than persuasive." *Id.* at A-23. "It is well-settled that consent to being a member or the representative of a class in one piece of litigation is not tantamount to a blanket consent to any litigation the class counsel may wish to pursue." *Id.* (quoting *In re Standard Metals Corp.*, 817 F.2d at 631). Although Reid appears to disagree with the Sixth Circuit's resolution of this issue, his Petition for Writ of Certiorari does not raise the issue for this Court's review.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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